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Truro Planning Board

Minutes of meeting, Tuesday, 22 May 2007 – Truro Public Library

Members present: Nicholas Brown (Chair), Ansel Chaplin, William Golden, Deborah Paine, Karen Snow, Robert Weinstein, William Worthington.

Others attending: Dennis Cole; Judy Hansen; Harry Harned; Susan Harned; Michael Johnson; Chet Lay, Slade Associates; John McElwee, Felco, Inc.; Lester Murphy, attorney; Nathan Nickerson; Nan Porter; Mike Rorro; Naomi Rorro; Amy St. James, stenographer; James Veara, Town Counsel; approximately 25 others.

Mr. Brown called the meeting to order at 7:00 pm.

1. Minutes

The minutes of the meeting on 1 May were reviewed. Mr. Chaplin moved that the minutes be approved as written; second by Ms. Snow. Vote: 7-0-0.

2. 2006-015 Julianne Britt, 2 Lot Definitive Subdivision

Representative: Lester Murphy, attorney for the applicant

Mr. Murphy stated, in response to Mr. Brown's question, that the topic to be discussed is withdrawal of the application without prejudice. Mr. Brown asked for a motion to open the public hearing. The motion was made and seconded. Vote: 7-0-0. Mr. Worthington moved that the Planning Board approve withdrawal of the application without prejudice; second by Ms. Paine. Vote: 7-0-0.

3. Ronald W. Nowland, Approval Not Required (ANR)

Representative: Chet Lay, Slade Associates

Mr. Brown noted that this discussion is not a public hearing. Mr. Lay asked if the revised plan is satisfactory or if other improvements are desired. In response to a question from Mr. Chaplin as to whether the applicant has a statement from Mass. Highways that curb cuts from Route 6 would be allowed, Mr. Lay responded that the situation is the same as the Brandon application which previously came before the Board. Mr. Chaplin requested that proof of Mass. Highways' approval of four curb cuts be obtained, and Mr. Lay agreed to do so. Mr. Golden noted that the site visit raised some questions that he would like to discuss. Mr. Brown stated that the condition of the travel way and its width are the two issues. Ms. Paine reiterated concern about the width and asked about adding turnouts. She also emphasized the need to preserve the standing oak trees.

Mr. Chaplin asked that some innovative process for the road surface other than asphalt be considered. Mr. Brown noted that the highway frontage on Lot 4 is not usable but there is excess frontage on Lot 3, which is theoretically available through an easement, and thereby alleviates his earlier concern about frontage. Ms. Snow noted the need for a proper apron, and Mr. Lay offered to meet with her at the site for clarification.

4. Public Hearing pursuant to MGL c.41, Section 81W

Czyoski Family Trust/A and B Realty Trust represented by attorney Lester Murphy; Amy St. James, stenographer to record proceedings.

Mr. Brown stepped down at this time, turning over the chair to Mr. Chaplin, and left the room. Mr. Chaplin requested a motion to open the Public Hearing. Mr. Golden so moved; second by Mr. Weinstein. Vote: 6-0-0.

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Mr. Murphy asked the members of the Planning Board to identify themselves and anyone else speaking to also do so for the benefit of the stenographer. Mr. Murphy then expressed concern about one member of the Planning Board being able to act in a fair and impartial manner, identifying Ms. Snow and stating that she owns property very close to the property that is the subject of the hearing. He stated that his concern is related to an earlier hearing at which much information was presented, after which Ms. Snow read a statement which had clearly been prepared before the hearing. He then invited Ms. Snow to respond.

Mr. Chaplin informed Mr. Murphy that the qualifications of a Board member to sit are not a matter for the Board to decide, that it is up to Ms. Snow to decide whether to participate, and further that it is entirely up to her whether to respond at this time. Ms. Snow responded that she can be impartial, and if living in close proximity were a disqualifier, there would frequently be less than a full Board to consider matters.

Mr. Chaplin briefly reviewed the history of actions related to the matter before the Board and asked if any Board member had a motion. Mr. Golden moved that the Planning Board rescind constructive approval because it had been granted inadvertently and because there is still concern about traffic safety and Pilgrim Pond; second by Mr. Weinstein.

Mr. Chaplin asked Mr. Murphy if he wished to address the motion. Mr. Murphy stated that he was very disappointed at the motion and reviewed background on the matter, noting that the Police Chief has no concerns about traffic or safety, nor does the Fire Chief. He stated that Franklin Ching, an expert on traffic safety, is present and prepared to make a presentation. He further noted that the Cape Cod Commission determined that there is no safety concern and that there is nothing in the record showing a concern for the impact on safety. Regarding Pilgrim Pond, Mr. Murphy stated that the plans contain a significant buffer to ensure that the hillside is undisturbed and that a site visit on the morning of a previous hearing demonstrated that a structure would not be seen from pond level. He further stated that the applicant is still willing to make the accommodations previously agreed to and that to rescind will only result in more litigation, noting that an arbitrary and capricious decision is one that is not supported by the data and studies presented. He continued, stating that the applicant has been willing during the entire process to work with the Planning Board, to make accommodations, and to address issues, but the applicant will not consider reconfiguring roads and intersections which belong to the Town. Mr. Murphy went on to say that while the unhappiness of the Sawyer Grove Road residents is understandable, others were likely upset when the Sawyer Grove Road subdivision was approved. He concluded by stating that the applicant has addressed traffic concerns and protection of the pond.

Mr. Chaplin noted that there are two grounds for the motion to rescind, the other being that constructive approval was granted inadvertently, and asked Mr. Murphy to address that point. Mr. Murphy responded that he does not believe that the prior denial was based on legal grounds. Mr. Chaplin then asked Town Counsel if he had any comment.

Town Counsel James Veara stated that the Court did not address the merits of disapproval, noting that what was constructively approved did not include any covenants, agreements or modifications, and the appeal filed did not mention any concern about the impartiality of Ms. Snow so there is no need for Ms. Snow to disqualify herself.

Mr. Chaplin, stating that he understands the strong feelings involved, invited those in the audience to speak to the narrow issue that is the subject of the hearing.

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Michael Johnson stated that based on paperwork sent earlier, the Planning Board previously voted no more development or subdivisions in the area under discussion. Mr. Veara then spoke, explaining that there is an alternative to further litigation if constructive approval is rescinded, i.e. the applicant can refile a plan with modifications and accommodations that the applicant is willing to make. Mr. Chaplin then asked Board members if anyone wanted to hear the presentation on safety that Mr. Murphy offered. Ms. Paine expressed her desire to hear the presentation and asked if there is anything in writing regarding the statement made by Michael Johnson.

Mr. Chaplin expressed the need for some order to the proceedings, noting the motion by Ms. Paine to hear the testimony on safety and asked for a second. There was no second. Referring to Mr. Golden's earlier motion, Mr. Veara asked Mr. Golden to clarify the issues. Mr. Golden stated that they are traffic safety and protection of Pilgrim Pond.

Mr. Chaplin asked Mr. Weinstein if he has had time to familiarize himself with the issues as he was not a member of the Planning Board when the matter was previously before the Board. Mr. Weinstein responded that as he was not part of the previous inter-Board discussions, he has concern about making a decision without the benefit of those discussions. Mr. Weinstein then asked if rescinding precludes further consideration by the Planning Board, noting that he was looking for a way to move forward. Mr. Veara responded in the negative, noting there is an alternative to litigation, as he mentioned earlier.

Mr. Chaplin then asked Ms. Paine if she has had time to familiarize herself with the issues. Ms. Paine responded affirmatively but noted that she was not sure that the motion on the floor is the correct one. Nathan Nickerson, a member of the audience, then requested permission to ask a question. Noting that the applicant has brought Mr. Ching, an expert on safety, he expressed his opinion that the Planning Board should want to hear what Mr. Ching has to say. He then asked if the applicant could bypass the Planning Board and propose affordable housing which would create many more units. Mr. Chaplin responded that the question is beyond the competence of the Planning Board.

Mr. Murphy asked that the record show the Planning Board refused the opportunity to hear from a traffic safety expert and the opinions of the Town's own safety officials. Mr. Worthington then asked that the Board take a few steps back and second the motion made earlier by Ms. Paine, stating that Mr. Murphy has raised valid concerns. Mr. Chaplin emphasized that rescinding does not preclude the applicant coming to the Planning Board with a new plan. Mr. Murphy asked what is the point of coming back with the same plan. Mr. Weinstein then asked Ms. Paine to elaborate on her concerns regarding the motion on the floor not being the correct one.

At this point Mr. Veara raised a procedural concern, noting that there are two motions already on the floor. The Board then voted on the motion to hear the presentation of the safety expert. Vote: 3-3-0 (motion failed). Mr. Chaplin stated that the Board will now move to the motion to rescind; Mr. Worthington asked the difference between a decision to rescind and a decision to modify. Mr. Chaplin, noting that he cannot help speaking as a lawyer, expressed the need to clear up confusion and not make a mistake that will end up back in court with the Planning Board on the losing side. Mr. Murphy added that to rescind means the applicant has to start the subdivision process all over again and may be disadvantaged by subsequent decisions that have been made at the Town and State levels, noting the Planning Board would still have authority to rescind if agreement on a modified plan with accommodations could not be reached.

Mr. Golden asked for a vote on the motion to rescind. Vote: 3-3-0 (motion failed).

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Mr. Worthington moved to modify the Czyoski plan by requesting the applicant to submit a new plan with the two northernmost lots removed. There was no second.

Mr. Weinstein, noting that both motions have been voted on, asked Ms. Paine to express her thoughts on an appropriate motion. Ms. Paine expressed her belief that the Board should work with the applicant to modify the plan, that it is in the best interests of the Planning Board and the applicant not to go back to square one, starting all over again.

Nan Porter identified herself as a resident of Sawyer Grove Road and asked the Board to be sensitive to the concerns of the previous Planning Board regarding no more subdivisions in that area. Mr. Golden advocated again for rescission in order to start with a clean slate. Mr. Weinstein addressed a question to Mr. Veara, asking him to clarify what rescission means. Mr. Nickerson interjected from the audience that it makes more sense for the Planning Board to work with the applicant to provide guidance on the changes needed. Mr. Worthington, responding to Mr. Nickerson, stated that modifying the plan requires the Planning Board to state what changes need to be made. Mr. Murphy added that the Planning Board does not have to take action tonight on rescinding or modifying, that it can schedule a site visit for the benefit of the new Board members.

Mr. Chaplin expressed the need to act on Mr. Golden's request to reconsider the motion to rescind, noting that it requires someone who opposed the original motion to make a motion to reconsider. There being no motion to reconsider, Mr. Worthington moved to continue the public hearing to 12 June; second by Mr. Golden. Mr. Veara asked Mr. Murphy if he could provide a list of changes and accommodations previously agreed to, and Mr. Murphy replied in the affirmative. Vote: 6-0-0.

Mr. Chaplin, addressing those in attendance, explained that the Board is trying to proceed following correct process. Naomi Rorro then spoke from the audience, stating that she has been at the proceedings on this matter since the beginning, that the main concern has always been safety, and that all reports indicate that safety is not an issue. She went on to say that as a bus driver, in that area 2-3 times a day for almost twenty years, she sees 2-3 cars in five days a week and cannot understand the Planning Board's concern with safety. She also stated her desire to know why Nick Brown steps down so frequently. Mr. Chaplin responded that she should ask Mr. Brown and stated the need to return to the matter at hand. The Board agreed to conduct a site visit on the morning of 12 June. Ms. Paine asked that the pole and the cul de sac be flagged. Mr. Chaplin asked that prospective speed bumps also be flagged.

Mike Rorro, speaking from the audience, identified himself as a resident of Truro for forty years and asked if the Planning Board was not going to hear Mr. Ching, an expert that someone has paid to attend. Mr. Chaplin responded that is where the situation stands, and Mr. Rorro countered that it's a waste of time and money again. Dennis Cole, speaking from the audience, asked when those attending will be allowed to speak, stating that he has a safety concern as there was an accident, and will it be at the next meeting. Mr. Chaplin responded that the best answer he can give is we hope so.

Mr. Brown rejoined the meeting.

5. 2006-017 John Reis, Inc., 450 Route 6, 10 Lot Definitive Subdivision Plan

Representative: John McElwee, Slade Associates

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Ms. Paine stepped down at this time and joined the audience. Mr. Worthington made a motion to open the Public Hearing; second by Mr. Golden. Vote: 7-0-0. Mr. Chaplin informed the Board that he was not stepping down but would not vote as he was absent from a previous public hearing on this application.

Mr. McElwee reviewed the timeframe for the project, June 2007 to the end of summer 2008, with landscaping expected to begin sometime in September 2007, for which there will be an irrigation system on a timer. Mr. Chaplin asked if the schedule could be committed to writing, and Ms. Snow stated that the schedule needs to be attached to the plan. Mr. Weinstein expressed his agreement with the points made by Ms. Snow and Mr. Brown. Mr. Brown asked for a motion. Mr. Weinstein moved to approve the definitive plan for John Reis, Inc. Applicant as submitted pursuant to MGL c.41, Section 81-T and Section 81-U and Section III. B of the Truro Subdivision Regulations, with the following conditions: 1. the construction protocol with the date June 15, 2007 be attached and incorporated into the plan, and 2. a standard Planning Board Covenant be included. The motion was seconded by Ms. Snow. Vote: 5-0-0.

6. Harry and Sue Harned, 37 Highland Road, Request for Waiver of Site Plan Review

Mr. Harned distributed to Board members the site plan prepared by Chet Lay, Slade Associates, and also made a number of photographs available. He explained that the planned addition is to be in the salt box style, 5 ft. in the front and 8 ft. in the back, with total height not to exceed 22-23 ft.

Ms. Paine expressed support for waiving site plan review. Mr. Worthington asked if the Harneds lived there year-round; Mr. Harned replied that they do not but their daughter does. Mr. Worthington then asked if the neighbor lived there year-round, and Mr. Harned replied in the negative. Mr. Weinstein stated that he saw no problem with the request for waiver, but noting a memo from Lauren McKean, Planner for the Cape Cod National Seashore, expressed his hope that the Building Department would require more detailed plans than those submitted. Mr. Weinstein then moved to waive site plan review; second by Ms. Paine. Vote: 7-0-0.

Mr. Brown stated that a copy of the minutes will be mailed to Mr. Harned indicating that the waiver was granted so that Mr. Harned could provide the Building Commissioner with documentation of the waiver.

7. Discussion of Subdivision Rules and Regulations

Ms. Snow reviewed a number of subdivision regulations of other towns that are available online and expressed the need to incorporate some of those into the Truro document and the difficulty of deciding which ones. Mr. Brown asked when the Board can finalize the document, and Mr. Worthington expressed his desire to talk with Ms. Snow and Mr. Chaplin before setting a date for bringing it to the Board.

Mr. Brown noted that there are two more agenda items: goals and objectives for the next fiscal year and reorganization of the Board following the Town election. Mr. Golden moved to adjourn which was seconded by Ms. Snow. Mr. Brown asked that the discussion of goals and objectives be put on the agenda for the next meeting and that the Board proceed to discuss its reorganization.

Mr. Worthington nominated Mr. Brown for chair; second by Mr. Weinstein. Vote: 7-0-0.

Mr. Golden nominated Mr. Chaplin for Vice Chair; second by Mr. Worthington. Vote: 7-0-0.

Ms. Paine nominated Mr. Weinstein for Secretary; second by Ms. Snow. Vote: 7-0-0.

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8. Other discussion

Ms. Paine informed the Planning Board that the Board of Selectmen is concerned that the “Shape of the Table” group is meeting and discussing without having a charge. The group is comprised of representatives of the Conservation Commission, Board of Health, Planning Board, and the Assistant Town Manager/Planner, Charleen Greenhalgh. No minutes are kept as the group is a discussion group which does not have a chair.

A motion to adjourn was made, seconded, and voted 7-0-0.

The meeting adjourned at 9:10 pm.

Respectfully submitted,

Sharon A. Sullivan, Secretary